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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ABRAHAM ORTIZ, III, LPT
11489 Laurel Avenue
Loma Linda, CA 92354

Physical Therapist License No. PT 22645

Respondent.

Case No. 1D 2007 64926

OAH No.

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about October 30, 1997, the Physical Therapy Board of California issued Physical Therapist License Number PT 22645 to ABRAHAM ORTIZ, III, LPT (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2660 of the Code states:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Advertising in violation of Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Procuring or aiding or offering to procure or aid in criminal abortion.

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Habitual intemperance.

(g) Addiction to the excessive use of any habit-forming drug.

(h) Gross negligence in his or her practice as a physical therapist or physical therapy assistant.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

(j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

1 (k) The aiding or abetting of any person to engage in the unlawful practice of
2 physical therapy.

3 (l) The commission of any fraudulent, dishonest, or corrupt act which is
4 substantially related to the qualifications, functions, or duties of a physical therapist or
5 physical therapy assistant

6 (m) Except for good cause, the knowing failure to protect patients by failing to
7 follow infection control guidelines of the board, thereby risking transmission of blood-
8 borne infectious diseases from licensee to patient, from patient to patient, and from
9 patient to licensee. In administering this subdivision, the board shall consider referencing
10 the standards, regulations, and guidelines of the State Department of Health Services
11 developed pursuant to Section 1250.11 of the Health and Safety Code and the standards,
12 regulations, and guidelines pursuant to the California Occupational Safety and Health Act
13 of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for
14 preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in
15 health care settings. As necessary, the board shall consult with the Medical Board of
16 California, the California Board of Podiatric Medicine, the Board of Dental Examiners of
17 California, the Board of Registered Nursing, and the Board of Vocational Nursing and
18 Psychiatric Technicians, to encourage appropriate consistency in the implementation of
19 this subdivision. The board shall seek to ensure that licensees are informed of the
20 responsibility of licensees and others to follow infection control guidelines, and of the
21 most recent scientifically recognized safeguards for minimizing the risk of transmission
22 of blood-borne infectious diseases.

23 (n) The commission of verbal abuse or sexual harassment.

24 5. Section 2660.1 of the Code states:

25 A patient, client, or customer of a licentiate under this chapter is conclusively
26 presumed to be incapable of giving free, full, and informed consent to any sexual activity
27 which is a violation of section 726.

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1 6. Section 726 of the Code states:

2 The commission of any act of sexual abuse, misconduct, or relations with a
3 patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action
4 for any person licensed under this division, under any initiative act referred to in this division and
5 under Chapter 17 (commencing with Section 9000) of Division 3.

6 7. Section 2661 of the Code states:

7 A plea or verdict of guilty or a conviction following a plea of nolo contendere
8 made to a charge of a felony or of any offense which substantially relates to the qualifications,
9 functions, or duties of a physical therapist is deemed to be a conviction within the meaning of
10 this article. The board may order the license suspended or revoked, or may decline to issue a
11 license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed
12 on appeal or when an order granting probation is made suspending the imposition of sentence,
13 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person
14 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
15 of guilty, or dismissing the accusation, information, or indictment.

16 8. Section 2661.5 of the Code states:

17 (a) In any order issued in resolution of a disciplinary proceeding before the board,
18 the board may request the administrative law judge to direct any licensee found guilty of
19 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable
20 costs of the investigation and prosecution of the case.

21 (b) The costs to be assessed shall be fixed by the administrative law judge and
22 shall not in any event be increased by the board. When the board does not adopt a
23 proposed decision and remands the case to an administrative law judge, the
24 administrative law judge shall not increase the amount of the assessed costs specified in
25 the proposed decision.

26 (c) When the payment directed in an order for payment of costs is not made by the
27 licensee, the board may enforce the order of payment by bringing an action in any
28 appropriate court. This right of enforcement shall be in addition to any other rights the

1 board may have as to any licensee directed to pay costs.

2 (d) In any judicial action for the recovery of costs, proof of the board's decision
3 shall be conclusive proof of the validity of the order of payment and the terms for
4 payment.

5 (e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate
6 the license or approval of any person who has failed to pay all of the costs ordered
7 under this section.

8 (2) Notwithstanding paragraph (1), the board may, in its discretion,
9 conditionally renew or reinstate for a maximum of one year the license or
10 approval of any person who demonstrates financial hardship and who enters into a
11 formal agreement with the board to reimburse the board within that one year
12 period for those unpaid costs.

13 (f) All costs recovered under this section shall be deposited in the Physical
14 Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually
15 recovered or the previous fiscal year, as the board may direct.

16 FIRST CAUSE FOR DISCIPLINE

17 (Conviction of a Crime)

18 9. Respondent has subjected his Physical Therapist License No. 22645 to
19 disciplinary action under section 2660, as defined by section 2660, subdivision (d), of the Code,
20 in that he was convicted of a crime substantially related to the qualifications, functions, or duties
21 of a physical therapist. The circumstances are as follows:

22 10. On or about sometime in November 2006, and while employed by Kaiser
23 Hospital in Riverside, respondent began providing physical therapy treatment to patient A.M.
24 From November 2006 through on or about January 2, 2007, respondent provided patient A.M.
25 with approximately six (6) treatments. The treatments consisted of a soft tissue massage of
26 patient A.M.'s upper body, including her back, shoulders, arms, and upper chest area. The
27 treatment provided to patient A.M. required that she remove her shirt and bra, and wear a
28 hospital gown.

1 11. On or about January 2, 2007, respondent was providing patient A.M. with
2 physical therapy treatment. While patient A.M.'s eyes were closed and her face was turned away
3 from respondent, respondent licked and kissed patient A.M.'s nipple and bare breast. Patient
4 A.M. promptly opened her eyes and saw respondent leaning over her breast. When patient A.M.
5 attempted to get up from the table and question respondent regarding what had just occurred,
6 respondent held her down by her arms and asked her not to tell anyone as respondent would lose
7 his job.

8 12. Thereafter, patient A.M. reported the incident to respondent's supervisor
9 and contacted the Riverside Police Department to file a complaint. Respondent was placed under
10 arrest.

11 13. On or about February 15, 2007, respondent was charged with violating
12 Penal Code section 243.3, subdivision (c), a felony, for sexual battery, as a result of the incident
13 involving patient A.M.

14 14. On or about December 17, 2007, following a plea of guilty, respondent
15 was convicted of violating Penal Code section 236, a felony, for false imprisonment, as a result
16 of the incident involving patient A.M.

17 SECOND CAUSE FOR DISCIPLINE

18 (Felony Conviction)

19 15. Respondent has further subjected his Physical Therapist License No. PT
20 22645 to disciplinary action under section 2661 of the Code, in that he was convicted of a felony
21 crime substantially related to the qualifications, functions, or duties of a physical therapist as set
22 forth in paragraphs 10-14 above, which are incorporated herein by reference as though fully set
23 forth.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Sexual Misconduct)

3 16. Respondent has further subjected his Physical Therapist License No. PT
4 22645 to disciplinary action under section 726 of the Code, in that he engaged in sexual
5 misconduct on a patient, as set forth in paragraph 11 above, which is incorporated herein by
6 reference as though fully set forth.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Physical Therapy Board of California issue a
10 decision:

11 1 Revoking or suspending Physical Therapist License Number PT 22645
12 issued to respondent Abraham Ortiz, III;

13 2. Ordering to pay the Physical Therapy Board of California the reasonable
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions
15 Code section 2661.5;

16 3. Taking such other and further action as deemed necessary and proper.
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18 DATED: March 25, 2008
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20 Original Signed By: _____
21 STEVEN K. HARTZELL
22 Executive Officer
23 Physical Therapy Board of California
24 Department of Consumer Affairs
25 State of California
26 Complainant
27

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